

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND**

In re:	:	Case No. 22-10571
	:	
Matthew M. Motil	:	Chapter 7
	:	
Debtor.	:	Judge Arthur I Harris

**MOTION OF SHARESTATES INVESTMENTS DACL, LLC FOR RELIEF FROM STAY
AND ABANDONMENT OF PROPERTY KNOWN AS
38-40 ROWLAND AVENUE, MANSFIELD, OH 44903
45 NORTH FOSTER STREET, MANSFIELD, OH 44903
49 WOLFE AVENUE, MANSFIELD, OH 44907
129 GETTINGS PLACE, MANSFIELD, OH 44903
133 ARTHUR AVENUE, MANSFIELD, OH 44903
136-138 NORTH WELDON AVENUE, MANSFIELD, OH 44902
139 SOUTH FRANKLIN, MANSFIELD, OH 44902
146 SOUTH MAIN, MANSFIELD, OH 44902
147 WEST FIFTH STREET, MANSFIELD, OH 44902
151 BOUGHTON AVENUE, MANSFIELD, OH 44903
155 WEST FIFTH STREET, MANSFIELD, OH 44902
179 WESTERN AVENUE, MANSFIELD, OH 44906
214 ATCHESON AVENUE, MANSFIELD, OH 44903
258 ELMWOOD DRIVE, MANSFIELD, OH 44906
278 HOME AVENUE, MANSFIELD, OH 44906
290 HOME AVENUE, MANSFIELD, OH 44906
316 HAMMOND AVENUE, MANSFIELD, OH 44902
375 THIRD AVENUE, MANSFIELD, OH 44902
379 HOME AVENUE, MANSFIELD, OH 44902
425 WEST FOURTH, MANSFIELD, OH 44903
431 PLYMOUTH STREET, PLYMOUTH, OH 44865
701 SPRINGMILL STREET, MANSFIELD, OH 44903**

Sharestates Investments DACL, LLC (the “Movant”) moves this Court, under Bankruptcy Code §§ 361, 362, 363 and other sections of Title 11 of the United States Code, and under Federal Rules of Bankruptcy Procedure 4001 and 6007, and under Local Bankruptcy Rule 4001-1 for an order conditioning, modifying or dissolving the automatic stay imposed by Bankruptcy Code § 362 and for abandonment of property under Bankruptcy Code § 554.

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On March 22, 2019, NSEM Mansfield 1, LLC obtained a loan from Sharestates Investments DACL, LLC in the amount of \$660,000. Such loan was evidenced by a Loan Agreement dated March 22, 2019, copy of which is attached as Exhibit “A”, a promissory Note dated March 22, 2019 (the “Note”), a copy of which is attached as Exhibit “B”, a Commercial Guaranty, a copy of which is attached as Exhibit “C.”
3. To secure payment of the Note and performance of the other terms contained in it, the Debtor, Matthew M. Motil, Managing Member of NSEM Mansfield 1, LLC executed a Security Agreement in favor of Sharestates Investments DACL, LLC dated March 22, 2019 (the “Security Agreement”). The Security Agreement granted a lien on the property owned by NSEM Mansfield 1, LLC (the “Collateral”). The Collateral is more fully described in the Security Agreement (check one):

☒ attached as **Exhibit D**;

OR

☐ contained in the Note, attached as Exhibit A.

4. The lien created by the Security Agreement was duly perfected by:

☒ Filing of the Security Agreement in the office of the Richland County Recorder on March 27, 2019 on the following properties:

38-40 ROWLAND AVENUE, MANSFIELD, OH 44903
45 NORTH FOSTER STREET, MANSFIELD, OH 44903
49 WOLFE AVENUE, MANSFIELD, OH 44907
129 GETTINGS PLACE, MANSFIELD, OH 44903
133 ARTHUR AVENUE, MANSFIELD, OH 44903

136-138 NORTH WELDON AVENUE, MANSFIELD, OH 44902
139 SOUTH FRANKLIN, MANSFIELD, OH 44902
146 SOUTH MAIN, MANSFIELD, OH 44902
147 WEST FIFTH STREET, MANSFIELD, OH 44902
151 BOUGHTON AVENUE, MANSFIELD, OH 44903
155 WEST FIFTH STREET, MANSFIELD, OH 44902
179 WESTERN AVENUE, MANSFIELD, OH 44906
214 ATCHESON AVENUE, MANSFIELD, OH 44903
258 ELMWOOD DRIVE, MANSFIELD, OH 44906
278 HOME AVENUE, MANSFIELD, OH 44906
290 HOME AVENUE, MANSFIELD, OH 44906
316 HAMMOND AVENUE, MANSFIELD, OH 44902
375 THIRD AVENUE, MANSFIELD, OH 44902
379 HOME AVENUE, MANSFIELD, OH 44902
425 WEST FOURTH, MANSFIELD, OH 44903
431 PLYMOUTH STREET, PLYMOUTH, OH 44865
701 SPRINGMILL STREET, MANSFIELD, OH 44903

☐ Filing of the UCC-1 Financing Statement in the office of _____ on _____ (date)

☐ Notation of the lien on the Certificate of Title.

☐ Other: (provide specific notation) _____

A copy of the recorded Security Agreement is attached as **Exhibit C**. Based on the title work, the lien is the 1st lien on the Collateral.

5. The entity in possession of the original Note as of the date of this Motion is Sharestates Investments DACL, LLC.
6. The entity servicing the loan is Investors Loan Servicing, LLC
7. The Note was transferred, as evidenced by the following:
 - a. If the Collateral is real estate:

- i. Under Uniform Commercial Code § 3-203(a) as applicable under state law in effect where the property is located, from the original lender:

☒ N/A

OR

☐ By endorsement on the Note, payable to _____.

OR

☐ By blank endorsement on the Note.

OR

☐ By allonge attached to the Note, payable to _____.

OR

☐ By blank allonge, attached to the Note.

OR

☐ The Note is not endorsed to the Movant, or is not endorsed in blank with an allegation that the Movant is in possession of the original Note. The factual and legal basis upon which the Movant is entitled to bring this motion is (explain with particularity and attach supporting documentation): _____

OR

☐ By endorsement on the Note or by allonge attached to the Note, through a power of attorney. If this box is checked, a copy of the power of attorney is attached as Exhibit _____. Explain why it provides Movant the authority to endorse the Note: _____

ii. Under Uniform Commercial Code § 3-203(a) as applicable under state law in effect where the property is located, from <the first transferee> to _____ ADD ADDITIONAL TRANSFER SECTIONS AS APPROPRIATE. THE LAST TRANSFERREE MUST BE THE MOVANT.

iii. A Court has already determined that Movant has the ability to enforce the Note with a judgment dated <INSERT DATE OF JUDGMENT> in <INSERT NAME OF COURT>. A copy of the judgment is attached as Exhibit _____.

iv. Other (explain): _____

b. If the Collateral is not real estate (check one):

☒ N/A.

OR

☐ From the original lender to <FIRST TRANSFEREE> by notation on the Security Agreement, attached as Exhibit A. (List additional documents supporting transfer)

8. The Security Agreement was transferred as follows:

☒ N/A.

OR

☐

9. The value of the Collateral is \$468,440.00. This valuation is based on the Auditor's Value.

10. As of September 16, 2022 there is currently due and owing on the Note the outstanding balance of \$1,059,982.89 plus interest accruing thereon at the rate of 11.25% per annum [\$439.82 per diem] from September 16, 2022, as described in more detail on the worksheet. The total provided in this paragraph cannot be relied upon as a payoff quotation.

11. The amount due and owing on the Note as set forth in paragraph 10 does not include a credit for the sum held in a suspense account by the Movant. The amount of the credit is N/A.

12. Other parties known to have an interest in the Collateral besides the Debtors, the Movant, and the trustee as (check all that apply):

☐ N/A.

☐ The _____ County Treasurer, for real estate taxes in the amount of _____.

☐ <CO-OWNERS, IF APPLICABLE, STATE NAME>.

☒ IRA Services Trust Company CFBO Kenneth P. Lynch IRA and Kenneth

P. Lynch, Trustee, may claim an interest in the subject property by virtue of an Affidavit of Facts Relating to Title as to Lost Mortgage in the amount of \$50,000.00, filed for record on December 11, 2020, in Book 2845, Page 466, as Instrument No. 20200001582, and recorded on August 6, 2021, in Book 2971, Page 360, as Instrument No. 202100011007, against property **574 West Forth Street, Mansfield, Ohio 44903**.

Ray Cattaneo, may claim an interest in the subject property by virtue of an Affidavit of Facts Relating to Title as to Lost Mortgage in the amount of \$100,000.00, filed for record on March 3, 2021, in Book 2868, Page 635, as Instrument No. 202100003005, against property **146 South Main St., Mansfield, Ohio 44902**.

Danielle Hansen, may claim an interest in the subject property by virtue of an Affidavit of Facts Relating to Title as to Lost Mortgage in the amount of \$85,000.00, filed for record on March 31, 2021, in Book 2878, Page 26, as Instrument No. 202100004452, against property **431 Plymouth Street, Plymouth, Ohio 44865**.

Michael Volkerding, may claim an interest in the subject property by virtue of an Affidavit of Facts Relating to Title as to Lost Mortgage in the amount of \$45,000.00, filed for record on April 15, 2021, in Book 2882, Page 592, as Instrument No. 202100005223, against property **431 Plymouth Street, Plymouth, Ohio 44865**.

Brian Niec, may claim an interest in the subject property by virtue of a Mortgage in the amount of \$25,000.00, filed for record on April 16, 2021, in Book 2883, Page 88, as Instrument No. 202100005299, against property **574 West 4th Street, Mansfield, Ohio 44903**.

Peter Linsky, may claim an interest in the subject property by virtue of a Mortgage in the amount of \$40,000.00, filed for record on April 23, 2021, in Book 2885, Page 173, as Instrument No. 202100005639, against property **49 Wolf Avenue, Mansfield, Ohio 44907**.

IRA Services Trust Company CFBO Kenneth P. Lynch, IRA, may claim an interest in the subject property by virtue of Judgment in the amount of \$61,574.85, filed for record on August 10, 2021, in Judgment Lien No. 2021 CJ 86 468, against property **574 West Forth Street, Mansfield, Ohio 44903**.

Kayla Voller, may claim an interest in the subject property by virtue of a civil action in the amount of \$200,000.00, filed for record on June 22, 2021, in Case No. 2021-CV-0302, against the below list of properties:

38Rowland Avenue, Mansfield, OH 44903
45 North Foster Street, Mansfield, OH 44903

49 Wolfe Avenue, Mansfield, OH 44907
129 Gettings Place, Mansfield, OH 44903
133 Arthur Avenue, Mansfield, OH 44903
136 North Weldon Avenue, Mansfield, OH 44902
139 South Franklin, Mansfield, OH 44902
146 South Main, Mansfield, OH 44902
147 West Fifth Street, Mansfield, OH 44902
151 Boughton Avenue, Mansfield, OH 44903
155 West Fifth Street, Mansfield, OH 44902
179 Western Avenue, Mansfield, OH 44906
214 Atcheson Avenue, Mansfield, OH 44903
258 Elmwood Drive, Mansfield, OH 44906
278 N. Home Avenue, Mansfield, OH 44906
290 N. Home Avenue, Mansfield, OH 44906
316 Hammond Avenue, Mansfield, OH 44902
375 Third Avenue, Mansfield, OH 44902
379 Home Avenue, Mansfield, OH 44902
203 Buckingham, Mansfield, OH 44903
425 West Fourth, Mansfield, OH 44903
431 Plymouth Street, Plymouth, OH 44865
574 W. 4th Street, Mansfield, OH 44903
701 Springmill Street, Mansfield, OH 44903
6220 Olivesburg-Finchville, Greenwich, OH 44837
417-421 Plymouth St. Plymouth, OH 44862

IRA Services Trust Company CFBO Kenneth P. Lynch, IRA, may claim an interest in the subject property by virtue of Judgment in the amount of \$61,574.85, filed for record on August 10, 2021, in Judgment Lien No. 2021 CJ 86 468, against property **574 West Forth Street, Mansfield, Ohio 44903**.

Joel Fine EPSP 401K, may claim an interest in the subject property by virtue of Judgment in the amount of \$ 206,000.00, filed for record on November 5, 2021, in Judgment Lien No. 2021 CJ 86 671, the below list of properties in the records of Richland County.

38-40 Rowland Avenue, Mansfield, OH 44903
45 North Foster Street, Mansfield, OH 44903
49 Wolfe Avenue, Mansfield, OH 44907
129 Gettings Place, Mansfield, OH 44903
133 Arthur Avenue, Mansfield, OH 44903
136-138 North Weldon Avenue, Mansfield, OH 44902
139 South Franklin, Mansfield, OH 44902
146 South Main, Mansfield, OH 44902
147 West Fifth Street, Mansfield, OH 44902
151 Boughton Avenue, Mansfield, OH 44903
155 West Fifth Street, Mansfield, OH 44902

179 Western Avenue, Mansfield, OH 44906
214 Atcheson Avenue, Mansfield, OH 44903
258 Elmwood Drive, Mansfield, OH 44906
278 Home Avenue, Mansfield, OH 44906
290 Home Avenue, Mansfield, OH 44906
316 Hammond Avenue, Mansfield, OH 44902
375 Third Avenue, Mansfield, OH 44902
379 Home Avenue, Mansfield, OH 44902
425 West Fourth, Mansfield, OH 44903
431 Plymouth Street, Plymouth, OH 44865

NSEM Mansfield 1, LLC is the current fee simple owner of the subject properties.

13. The Movant is entitled to relief from the automatic stay under Bankruptcy Code § 362(d)

for these reason(s):

☒ Debtor has failed to provide adequate protection for the lien held by the Movant for these reasons (explain): failing to pay the loan when it became due on April 1, 2020.

☐ Debtor has failed to keep the Collateral insured as required by the Security Agreement.

☐ Debtor has failed to keep current the real estate taxes owed on the Collateral.

☒ The Loan matured on April 1, 2020. As of September 16, 2022 there is currently due and owing on the Note the outstanding balance of \$1,328,778.73 plus interest accruing thereon at the rate of 11.25% per annum [\$563.10 per diem] from September 16, 2022, as described in more detail on the worksheet. The total provided in this paragraph cannot be relied upon as a payoff quotation.

☒ Debtor has no equity in the Collateral, because the Collateral is valued at \$468,440.00, and including the Movant's lien, there are liens in an aggregate amount of \$1,934,078.59 on the Collateral.

☒ Other cause (set forth with specificity): Movant seek in rem relief for the purpose of exercising its remedies available under state law, up to and including foreclosure of its mortgage against Debtors' interests in the Properties.

14. Movant has completed the worksheet, attached as Exhibit D.

15. Movant is entitled to an order directing the trustee to abandon the Collateral under 11

U.S.C. § 554(b) for these reasons (check all that apply):

☐ The collateral is burdensome to the estate because _____.

☒ The Collateral is of inconsequential value and benefit to the estate because upon liquidation of the Collateral no proceeds will remain for the benefit of the estate.

WHEREFORE, Movant prays for an Order from the Court:

- (a) granting Movant relief from the automatic stay of Bankruptcy Code § 362 to permit Movant to proceed under applicable nonbankruptcy law; AND
- (b) authorizing and directing the Chapter 7 Trustee to abandon the Collateral under Bankruptcy Code § 554.

Respectfully submitted,

/S/ Daniel A. Cox
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Crystal L Saresky (0091328)
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Phone: 513-852-6066
Fax: 513-852-6087
bankruptcy@woodlamping.com

CERTIFICATE OF SERVICE

The undersigned certifies that on September 26, 2022, a true and correct copy of the forgoing Motion for Relief from Stay and Abandonment and Exhibits were served via the Court's electronic case filing systems on the following who are listed on the Court's Electronic Mail Notice List:

Virgil E. Brown virgil@vebtrustee.com, vbrownjr@ecf.axosfs.com
Evan T. Byron etb@kdglegal.com, hlb@kdglegal.com
Thomas W. Coffey tcoffey@tcoffeylaw.com
Matthew R. Duncan mrduncan@bmdllc.com,
blhefner@bmdllc.com;lmrossos@bmdllc.com
Eric R. Neuman eric@drlawllc.com,
kim@drlawllc.com;r50765@notify.bestcase.com;raymond@drlawllc.com;leanne@drlaw
llc.com
David M. Neumann dneumann@meyersroman.com,
jray@meyersroman.com;mnowak@meyersroman.com
Jody Michelle Oster jodymoster@gmail.com
United States Trustee (Registered address)@usdoj.gov
Scott R. Belhorn ust35 Scott.R.Belhorn@usdoj.gov

and by regular U.S. Mail, postage prepaid to:

Matthew M. Motil
7011 Chadbourne Drive
North Olmsted, OH 44070

/S/ Daniel A. Cox
Daniel A. Cox (0076469)